

*Potential forfeiture of Diamante Cabo san Lucas (US entities)*

March 5, 2019

Judge Joseph Bianco  
U.S. Federal Court House -- EDNY  
100 Federal Plaza  
Central Islip, NY 11722

**RE: Potential forfeiture of Diamante Cabo san Lucas (US entities) ("DCSL")**

Dear Judge Bianco:

Your Honor, following the March 1, 2019 oral arguments for forfeiture, there is an enormous **"elephant"** that the government is not addressing; nor is it obvious to the Court, because of the premeditated structure of the Diamante organization by Jowdy.

**Jowdy cannot be taken out of the "control" position in the Cabo Project regardless of the equity ownership of the four (4) USA LLCs; forfeited or not.**

The FBI knows this. Kenner explained it to them during his June 2009 proffer. The FBI knows Jowdy cannot lose control at DCSL; and the machinations of equity and forfeiture are meaningless because while Jowdy is in control at Danske's behest, *"the hockey players will never see a dime because they said he [Jowdy] was a crook"*.<sup>1</sup> Danske can also default the loan and re-hire Jowdy as their well-paid administrator.

A criminal procedure is the only available deterrent for the Jowdy frauds and the Danske Bank complicity (as Kaiser defines as *"willful blindness"*); specifically now that it is forensically clear that Kenner and his Baja Ventures 2006 partners **never** received any Mexico equity (or any other benefits) based on the fully transparent 2004 Hawai'i loans to Jowdy.<sup>2</sup>

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<sup>1</sup> John Kaiser letter to the Court (*Document 628 at 4*).

<sup>2</sup> The Court confirmed in its M&O (*Document 501*) that Michael Peca **IMPEACHED** himself about no loan knowledge. The Court verified: *"However, he admitted that he had testified in front of the Grand Jury that he was aware of a short-term loan made to Jowdy using Little Isle 4's capital account."* (Tr.499).

Pecas 2011 SDNY Grand Jury testimony confirmed:

*"That [Little Isle 4] capital account was loaned to Ken Jowdy, our business partner, so there is no need at the time to be worried about anything. The money was loaned to Ken Jowdy to basically help some of the purchase of the Cabo property so we can get the funding. And then it was supposed to be a short-term loan."*

Michael Peca's CTE compounded Kristen Peca's fraud when she claimed at trial (2015) that

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Jowdy and his attorneys are deftly aware of this salient issue, and specifically designed it that way in 2006 to protect their future plans; unknown to others and me. It is their wildcard to continue the budget looting that I [Kenner] was the whistleblower to, twelve (12) years ago once the frauds were **discovered by me**. Apparently after five (5) years of working for Jowdy [2012-2017], Kaiser decided to speak up in agreement with Kenner's 2007 declarations. Kenner exposed Jowdy's crimes over ten (10) years ago after declining Jowdy's **BRIBE** of FBI protection and millions of dollars to "go along". But, Kaiser **ONLY** disclosed what he knew after being fired.<sup>3</sup>

**Jowdy has full control of DCSL in Mexico – so the USA decision is only a paper issue...**

Jowdy is the sole owner and Managing Member of the Mexican entity, **Diamante Cabo san Lucas S. de R.L. de C.V.** (a Mexico company)<sup>4</sup>. In the Mexican Fedicomiso (*a.k.a. Trust*) paperwork that owns the property in Mexico, Danske Bank is in first (1<sup>st</sup>) lien position. As a result, Jowdy will always remain the Managing Member, unless Danske

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she was part of the 2005 meeting with Kenner to decide about opening a Line of Credit for Michael Peca's Hawai'i investment, yet she was "**caught**" by her own confessions on a FBI recording in 2012 confirming she had no knowledge of the Northern Trust LOC (concealed by her husband – Kenner's client) until years later -- as follows:

**[@ About 5.45 of the 1:34.50 call] –**

**Kristen Peca** – Well, I was referencing the earlier stuff that you said, I don't remember a large amount being distributed back to our account and the timing of the years of the loan, the line of credit, that happened when we were in OHIO [2008 & 2009]. I don't understand how it could have been open for 5 years before that? Because we had a bond account going? Do you mean the Hawai'i...you had a line of credit, but not for us?

**Kenner** – No, no, you guys had lines of credit for 5 years at Northern Trust.

**Kristen Peca** – for 5 years?

**Kenner** – for 5 years! When you were in OHIO [2009], that's when the thing [LOC] closed.

<sup>3</sup> Jowdy was able to use John Kaiser and Bryan Berard by hiring them in Mexico [2012] for huge salaries – and facilitate their fabricated corroboration with the FBI Agent (Galioto) in order to "*get rid of Kenner*" thru manipulation of the facts and a **subset** of the investors who previously confirmed their collective knowledge; yet at trial in 2015, the investors all suffered from CTE (or amnesia) by failing the "*memory test*" of what they knew, once upon a time.

<sup>4</sup> Jowdy's attorney Souther, under Louis Freeh at Freeh Sporkin Sullivan LLP, represents Jowdy's Mexican **control** entity amongst others in the Jowdy cabal as referenced in his January 30, 2019 submission to the Court (*Document 611*).

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Bank removes him, or a Mexico Court does. That is precisely why I [Kenner] spent over four (4) years in Mexico [2009-2013] working thru the Jowdy bribery and graft in the Court system to reach the State Supreme Court and gain “receivership” for my investors and I in 2013. One (1) month prior to our success in the Mexico Supreme Court (December 2013) is unfortunately when FBI agent Galioto and two (2) Jowdy employees (Kaiser and Berard) ruined our group efforts to remove Jowdy thru the Mexico legal system; and unraveled over four (4) years of daily legal efforts and approximately \$1 million of Mexico legal expenses paid by Kenner.

**“Danske Bankers in Jowdy's pocket”**

John Kaiser's February 28, 2019 expose letter to the Court (*Document 628*) clearly defines the relationship with Danske as *“The Bankers and Jowdy seemed to be attached at the hip and more interested in hanging out in the restaurant eating and drinking than speaking to contractors”* who Kaiser alleges are constantly owed \$10 million or so based on Jowdy's ongoing pilfering of the Danske budget by Jowdy and his people, unchecked.

These are the same budget pilfering schemes that Jowdy and Masood Bhatti (formerly the Lehman Brothers' lender) used in 2007 in Jowdy's Lehman Brothers' funded, Texas and Tennessee projects (for over a hundred million dollars). Bhatti funded these two (2) previous projects and manipulated Jowdy's control of them, while utilizing Cabo budget funding (approved by Bhatti) to initiate the deals. *Kaiser's letter confirms Jowdy continues to do the same -- since he first robbed my clients and me in August 2002.*

According to Kaiser, his February 2019 letter reveals that Bhatti now plays a continuing role as a Jowdy conspirator at “Silverlake Real Estate Partners” **receiving \$150,000 to \$200,000 a month** to find “investors” or “loans” for DCSL.

- This is, in fact, exactly what the government prosecuted as a conspiracy with Constantine's Hawai'i consulting payments (of concealment). Notwithstanding, I [Kenner] am a DCSL shareholder; and this is the first (1<sup>st</sup>) time that I [Kenner] am learning of this Mexico consulting activity. *It appears that the same double-standard, to prosecute Jowdy and his associates, does not apply.*

**No Hawai'i nexus to Jowdy Cabo funds**

Despite “no nexus” between Kenner and Kenner investors to any closing funds in Cabo as outlined during March 1, 2019 oral arguments<sup>5</sup>, it is irrefutable that there are

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<sup>5</sup> Kenner's **Baja Ventures 2006, LLC** – with Jozef Stumpel and Jere Lehtinen, funded the first **\$4.1 million** of the Cabo project in 2005 as **high-risk, hard money deposits months before the other investors made deposits with the Lehman Brothers funding agreement already in place**; thus CSL Properties had no jeopardy of losing their deposit funds like Baja Ventures 2006 risked.

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absolutely **"no nexus funds"** involved in the Baja Ventures 2006 or CSL Property capital account acquisitions of equity. The \$6.4 million intended total of DCSL acquisition funds were all wired to Jowdy as requested by him (*See Government-Forfeiture-36*).

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- Yet -- **Jowdy** only registered \$2.5 million in the Baja Ventures 2006 closing capital account – **stealing the \$1.6 million balance**, which Stumpel was forced to sue him for in Mexico. This led to Kaiser's fraud on the EDNY about an alleged Mexico document forgery – later proven false by the FBI recordings of Bryan Berard and his confessions.

The second (2<sup>nd</sup>) investor LLC [CSL Property, LLC] invested \$2.3 million in the DCSL closing, also directly thru Jowdy, after Lehman Brothers confirmed their plans to fund the project. **Jowdy** – as true to pilfering form – only documented \$2.0 million in their closing capital account; **stealing the other \$300,000**.

- Jowdy did not change either underfunded capital account fraud (by him) after the closing once discovered and addressed by Kenner and Kenner investors, leading to mediated settlement efforts in 2007-08 (thru Constantine), before suing Jowdy in California. Please note that the Arizona "loans" lawsuit was already underway before the Constantine-GSF efforts for a year – contradicting the government's trial claims (again).

The March 2006 Cabo closing included another \$100,000 personally from Bhatti (his Somerset Properties, LLC), leaving only \$125,000 of unaccounted closing funds. Although fraudulently acquired solely by Jowdy – and adjudicated in December 2010 in Nevada as Jowdy's theft **alone** from Glen Murray – Jowdy transferred \$500,000 of Murray's stolen funds to his Mexico accounts (owned by him and his Mexico attorney). (**See Murray's affidavit of "renewal of judgment" versus Jowdy for the stolen funds [attached]**).

Murray's \$500,000 was in addition to the \$500,000 Jowdy stole from Mattias Norstrom and never repaid – despite sending Norstrom a \$500,000 bad check from Baja Development Corp. as his security for the loaned funds. *Jowdy confirmed his theft from Norstrom in his January 2010 California deposition; in addition to the \$5 million Hawai'i thefts, the Stumpel \$1.6 million thefts, the various thefts from Kenner, Gaudet, and others without remorse.*

- Thus – based on what Kenner and Kenner investors forwarded to Jowdy for their respective equity positions thru Baja Ventures 2006 and CSL Properties – **NO MONEY from Hawai'i can be traceable to the Cabo project**. There is a multitude of other "likely sources" for any of the remaining \$125,000 funds Jowdy co-mingled by himself.

The Third Circuit struggled with this same issue in *United States v. Voigt* (and used as the money laundering example in *United States v. Nicolo*, 2<sup>nd</sup> Circuit), affirming, "after numerous intervening deposits and withdrawals...we cannot say that more probably than not the jewelry is 'traceable to' money laundering activity". Jowdy's unaccounted \$125,000 closing difference is the proverbial "jewelry".

- This disregards the most basic premise that **Jowdy is not a co-defendant**; he is simply a thief who continues to avoid proper prosecution.

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What Jowdy did with investor funds, once he received them is not an issue for the Court – **BECAUSE** – the government did not name Jowdy as a co-defendant. Thus, the funds Jowdy manipulated were all behind his “*Chinese Wall*” and not attachable to any money laundering conspiracy with Kenner. That was FBI Agent Galioto’s well-thought-out and prosecuted plan since 2009; working hand-in-hand with Jowdy’s cabal at all times since the Kenner June 24, 2009 FBI proffer to him about the same crimes Kaiser is now crying about ten (10) full years later (but only after being fired). In direct contrast, Kenner tuned down the proposed payoffs and exposed Jowdy.

- The Hawai’i funds were at all times (and pursuant to the 2004 Hawai’i lending agreement in evidence) loans to Jowdy **personally**. Jowdy’s attorney, Souther, confirmed this relevant point in his January 2019 letter to the Court (*Document 611 at 3*): “Mr. Jowdy never agreed to borrow any of the funds used to fund any portion of the down payment from Kenner or anyone else personally.”
- As much as the defendants and the Court want to recoup the funds Jowdy has squandered since 2004 from the Hawai’i loans, they are only traceable to Jowdy personally; **not Baja Ventures 2006, CSL Properties &/or the DCSL project**. The FBI and US Attorneys’ Office have repeated DENIED Kenner’s written offers to fully trace the Jowdy frauds, **FOLLOW THE MONEY**, and work towards recovery thru the proper “*nexus*”. That protocol is the only method Congress and the Constitution designed.

Regardless of the “*clean*” and fully traceable **Baja Ventures 2006 and CSL Properties equity deposits of \$6.4 million** (out of the initial \$6,625,000 closing deposit), Jowdy will continue, under any scenario adjudicated by this Court, be the administrator of DCSL in Mexico.

- Kaiser confirmed that Jowdy’s “side-deals” are well-known. They will continually go unchecked as long as Danske Bank allows it, while they are “in his pocket” and Jowdy is the Mexico administrator.

**Kenner and Kenner investors’ efforts to remove Jowdy prevented by FBI arrest in 2013 -- protecting Jowdy’s schemes for another six (6) years and counting...**

The 2013 pre-arrest efforts by Kenner and a number of DCSL shareholders in Mexico, arranged thru Mexican counsel, to have the DCSL property granted to Kenner’s control thru a legal receivership process was pending its December 2013 completion. Kenner was scheduled to give corroborated testimony with several investors about all of the Jowdy embezzlements and frauds, solely related to the DCSL project. **The FBI has ignored these exact frauds to Jowdy’s protective benefit since Kenner’s June 24, 2009 whistleblowing proffer**. The investors’ Mexico attorneys had pre-arranged for a Mexico hedge fund to buy out the controlling management interest from the Kenner receivership and repay approximately \$20 million to the Kenner investment group;

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leaving the investors in the same position they are today as minority partners – BUT fully repaid from the Mexico-Hawai'i frauds by Jowdy.

Fortuitously on Jowdy behalf, the prosecutorial efforts of FBI agent Galioto and Jowdy's employees, Berard and Kaiser, were able to prevent the pending December 2013 Supreme Court testimony by having Kenner arrested one (1) month earlier. If this arrest had not occurred, all of the Mexico-Hawai'i investors would have been fully repaid after their own corroborating testimony, in full concert with Kenner's consistent 2015 testimony (thru today). The Supreme Court testimony of Kenner and Kenner investors was already scheduled, *as a result of face-to-face preparatory meetings with the Justices, in the State Supreme Court, which holds jurisdiction over Jowdy; but Jowdy and his cabal discovered it.*

Instead and six (6) years later, this Court is tasked with this debauchery to disassemble this mess "lacking nexus" to the Cabo project, and without any ability to unseat Jowdy's daily control (and perpetual looting) either way; because he is a non-party and never was a co-defendant in this case (by premeditated design).

If the government wants to acquire, through forfeiture, any portion of the DCSL property, they need to follow the Constitution. They need to prosecute the person who received the "proceeds" and then procedurally "*disgorge[] a defendant of his ill-gotten gains*"<sup>6</sup> from the proper person (as documented); **Ken Jowdy**. That is how Congress designed "*separate[ing] the criminal from his profits*" (quoting Stefan Cassella, Assistant Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice before a Congressional Committee).

Sincerely,

*Phil Kenner*

Phil Kenner

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<sup>6</sup> See *United States v. Bajakajian*, 524 U.S. 321, 332, 118 S.Ct. 2028, 141 L. Ed. 2d 314 (1998).